United Nations Convention on the Law of the Sea SPLOS/318

Meeting of States Parties

Distr.: General
26 March 2018

Original: English

Twenty-eighth Meeting
New York, 11–14 June 2018

Report on budgetary matters for the financial periods 2015–2016 and 2017–2018

Presented by the Registrar of the International Tribunal for the Law of the Sea

I. Cash surplus for the financial period 2015–2016

A. Excess of income over expenditure

1. In June 2017, the twenty-seventh Meeting of States Parties took note of the report of the external auditor for the financial period 2015–2016 (SPLOS/305), which had been submitted to it by the International Tribunal for the Law of the Sea (SPLOS/316, para. 32). According to the audit report, the final excess of income over expenditure as at 31 December 2016 amounted to €192,840.

2. As explained in the report on budgetary matters for the financial period 2015–2016, the total expenditure for that period stood at €18,662,719, representing 99.18 per cent of the total appropriation (€18,817,600) (SPLOS/306, para. 2). This performance may be explained by the optimal use of resources in a period of increased judicial workload. In this respect, it may be noted that the appropriations approved for the financial period 2015–2016 were used to cover expenses relating to judicial work of the Tribunal in the following cases:

(a) Case No. 23 (*Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*)

A request for the prescription of provisional measures was submitted to a special chamber of the Tribunal on 27 February 2015. The special chamber delivered its order on 25 April 2015;

(b) Case No. 24 (The "Enrica Lexie" Incident (Italy v. India), provisional measures)

The case was submitted to the Tribunal on 21 July 2015 and the Tribunal issued its order on provisional measures on 24 August 2015;

(c) Case No. 25 (*The M/V "Norstar" Case (Panama v. Italy)*)

18-04728 (E) 060418

Please recycle

The case was submitted to the Tribunal on 17 December 2015. On 10 March 2016, Italy filed preliminary objections. The public hearing on the preliminary objections was held from 20 to 22 September 2016, and the Tribunal delivered its judgment on the preliminary objections on 4 November 2016.

B. Provisional cash surplus

3. Pursuant to regulation 4.4 of the Financial Regulations and Rules of the Tribunal, the provisional cash surplus is determined by establishing the balance between credits (assessed contributions actually received, miscellaneous income received and additional appropriations) and charges (disbursements against appropriations and provisions for unliquidated obligations). For the financial period 2015–2016, the excess of income over expenditure amounts to €192,840 and is calculated as follows (in euros):

Credit	18 855 559
Charges	-18 662 719
Excess of income over expenditure	**192 840**

4. Pursuant to regulation 4.3 of the Financial Regulations and Rules of the Tribunal, the amount of unpaid contributions should be deducted from this balance. On that basis, the provisional cash surplus for the financial period 2015–2016 was determined to be -€563,423. This amount was based on the report of the external auditor for the financial period 2015–2016, with financial statements of the Tribunal as at 31 December 2016 (SPLOS/305), and is calculated as follows (in euros):

Credit	18 855 559
Charges	-18 662 719
Cancellation of the 2013–2014 obligations surrendered with the 2013–2014 cash surplus	-41 977
Unpaid contributions	-714 286
Provisional cash surplus	**-563 423**

C. Cash surplus

5. Under regulation 4.4 of the Financial Regulations and Rules of the Tribunal, the cash surplus is determined by crediting to the provisional cash surplus any arrears of contributions from prior periods received during the financial period and any savings from the provisions made for unliquidated obligations for the financial period.

6. The cash surplus for the financial period 2015–2016 stood at -€183,676 as at 31 December 2017 and is calculated as follows:

Provisional cash surplus -€563,423 + arrears of contributions from prior periods received in 2017 €352,233 + savings from the provisions made from unliquidated obligations €27,514 = cash surplus -€183,676.

7. The cash surplus, as reflected in paragraph 6, was reviewed by the auditor on 6 February 2018. The auditor certified that the cash surplus for the financial period 2015–2016 as at 31 December 2017 amounted to -€183,676 (see annex I).

D. Surrender of cash surplus

8. Under regulation 4.5 of the Financial Regulations and Rules of the Tribunal, the cash surplus will be surrendered as follows:

(a) *Apportionment of cash surplus*

The cash surplus, as determined above, will be apportioned among the States parties in proportion to their contributions as determined for the financial period 2015–2016, to which the surplus relates.

(b) *Surrender of cash surplus*

The cash surplus for the financial period 2015–2016 thus apportioned to the States parties will:

(i) Be surrendered to the States parties, provided that their contribution for the financial period 2015–2016 has been paid in full;

(ii) Be applied to liquidate first, in whole or in part, any arrears in contributions.

(c) *Retention of cash surplus apportioned but not surrendered*

Any cash surplus apportioned to the States parties but not surrendered owing to the non-payment or partial payment of their contributions for the financial period in question will be retained by the Registrar until such time as the contribution for that financial period is paid in full.

9. Since the cash surplus for the financial period 2015–2016 is negative, no funds will be surrendered to the States parties.

II. Provisional performance report for 2017

10. In June 2016, the twenty-sixth Meeting of States Parties approved a budgetary amount of €21,119,900 for the financial period 2017–2018 (SPLOS/301, para. 1). This amount included a provision of €3,406,800 under "Case-related costs" to cover the costs relating to the consideration of Case No. 23 and Case No. 25 and to enable the Tribunal to deal with two urgent proceedings in 2017–2018.

11. Annex II contains the performance report for the year 2017. The performance report is provisional since it concerns the first year of the budget for the biennium 2017–2018.

12. As shown in annex II, the total expenditure for 2017 stands provisionally at €8,967,272, representing 86.08 per cent of the appropriations in the amount of €10,416,800 allocated for that year.

Case-related costs

13. A provision in the amount of €3,406,800 was approved under "Case-related costs" for the 2017–2018 budget. Of that amount, €1,661,400 was allocated for 2017 to deal with part of Case No. 23, a case dealt with by a special chamber of the Tribunal, as well as one urgent proceeding. In 2017, the special chamber completed its considerations, and delivered its judgment on 23 September 2017. No urgent proceeding was dealt with in 2017. As a result, €713,055 was used by the end of 2017, which corresponds to 42.92 per cent of the provision.

Recurrent expenditure

14. Under section 7, "Operating expenditures", the budget line "Communications" was overspent with respect to the provision allocated to 2017. This is due to the installation of a firewall for protecting the Tribunal's email and online communications system. The level of expenditure in 2017 will be taken into account in the use of this budget line in 2018 to avoid any overexpenditure for the biennium.

III. Report on action taken pursuant to the Financial Regulations and Rules of the Tribunal

A. Investment of funds of the Tribunal

15. Regulation 9 of the Financial Regulations and Rules of the Tribunal stipulates the following:

> 9.1 The Registrar may make prudent short-term investments of moneys not needed for immediate requirements and shall inform the Tribunal and the Meeting of States Parties periodically of such investments.
>
> 9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each fund or account.

16. During 2017, the Tribunal's funds were kept at JP Morgan Chase Bank and Deutsche Bank. Short-term investments in euros, which are investments made for less than 12 months according to rule 109.1 of the Financial Regulations and Rules of the Tribunal, were made with Deutsche Bank. The funds yielded an interest of €865 during 2017, which has been credited to miscellaneous income, in compliance with regulation 9.2.

B. Trust fund for the law of the sea

17. At its twenty-eighth session, the Tribunal approved the Registrar's proposal to establish a trust fund for the law of the sea, in accordance with the Financial Regulations and Rules of the Tribunal, and the Registrar subsequently established a new trust fund for the law of the sea account with Deutsche Bank in Hamburg, Germany. The trust fund is intended to promote the advancement of human resources in developing countries in the areas of the law of the sea and maritime affairs in general. During the years 2010–2016, contributions were received from Korwind, a Hamburg-based Korean company working in the field of renewable energy (€25,000), and from the Korea Maritime Institute (€141,000). In 2017, the trust fund received three contributions from the Korea Maritime Institute, in the amount of €4,482, €15,000 and €25,000, and a contribution in the amount of €150,000 from the Government of China. Contributions are used to offer financial assistance to applicants from developing countries for participation in the Tribunal's internship programme and the summer academy of the International Foundation for the Law of the Sea. The trust fund was also used to finance a regional workshop held in San José in June 2017. As at 31 December 2017, the performance of the trust fund was as follows (in euros):

Contributions	194 482
Expenditure on participants and authorized activity	-28 598
Gain on exchange	77
Total	**165 961**
Reserves from prior periods	31 915
Available balance	**197 876**

C. Nippon Foundation trust fund

18. In March 2007, the Tribunal and the Nippon Foundation signed the Nippon Foundation Grant Agreement. Pursuant to the Agreement, the Nippon Foundation agreed to contribute €200,000 to the Nippon Foundation-International Tribunal for the Law of the Sea capacity-building and training programme on dispute settlement under the United Nations Convention on the Law of the Sea.

19. In accordance with regulation 6.5 of the Financial Regulations and Rules of the Tribunal, a trust fund was subsequently established and a special bank account, named "Nippon Foundation Grant", was set up in euros with Deutsche Bank. The purpose of the grant is to finance the expenses of participants from developing countries in the aforementioned programme.

20. Subsequent annual contributions totalling €2,010,000 were made by the Nippon Foundation during the period 2008–2016. In March 2017, a contribution of €230,000 for the 2017–2018 programme was received. The performance of the Nippon Foundation Grant as at 31 December 2017, which is to be reported to the Meeting of States Parties in accordance with regulation 6.5, was as follows (in euros):

Contribution	230 000
Expenditure on participants and authorized activity	-193 583
Accounts receivable and prepaid expenses	-24 727
Loss on exchange	-131
Non-refundable tax	-774
Reserves from prior periods	350 450
Available balance	**361 235**

D. China Institute of International Studies trust fund

21. Following the signing of a memorandum of understanding between the Tribunal and the China Institute of International Studies on 3 May 2012, a trust fund — designated as the China Institute of International Studies Grant — was set up to support the Tribunal's internship programme, the summer academy of the International Foundation for the Law of the Sea and other projects, including regional workshops. A contribution from the Institute to the Grant in the amount of €100,000 was received on 20 June 2012 and was used to support the internship programme and the summer academy. As at 31 December 2017, the balance of the Grant stood at €15,374. This amount will be used to finance a workshop in Cabo Verde in May 2018.

E. Twentieth anniversary trust fund

22. In October 2015, at its fortieth session, the Tribunal decided to establish a trust fund to finance the events and activities that it organized to celebrate its twentieth anniversary and disseminate information on its role in the settlement of disputes relating to the law of the sea. In total, four contributions were received. Two contributions of €25,000 each were received from the Korea Maritime Institute in May 2016 and July 2016, respectively, a contribution of €109,443 was received from the Government of Japan in July 2016, and a contribution of €7,000 was received from the Government of Germany in December 2016. In addition to the 2016 events, an academic event to commemorate the anniversary, devoted to the role of the Tribunal in addressing new challenges in the international law of the sea, was held in Hamburg on 18 March 2017. The funds of the twentieth anniversary trust fund were fully utilized and the bank account opened for the trust fund was closed. The final report of the twentieth anniversary trust fund will be included in the 2017–2018 financial statements of the Tribunal.

Annex I

Report of the independent auditor

To the International Tribunal for the Law of the Sea,

We have audited the accompanying cash surplus, including the corresponding information (hereinafter referred to as "cash surplus") of the International Tribunal for the Law of the Sea, Hamburg, Germany, for the biennial financial period 2015–2016, ending on 31 December 2016 (see enclosure).

Management's responsibility for the financial statements

The management of the International Tribunal for the Law of the Sea, Hamburg, Germany (hereinafter referred to as "the Tribunal"), is responsible for the preparation of the cash surplus in accordance with the Financial Regulations and Rules of the Tribunal. The management is also responsible for such internal control as management determines necessary to enable the preparation of the cash surplus that is free from material misstatements, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on the cash surplus. We conducted our audit of the cash surplus in accordance the generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer in Deutschland (Institute of Public Auditors in Germany), Dusseldorf, Germany. Those standards require that we comply with professional ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the cash surplus is free from material misstatement.

The audit involves the performance of procedures to obtain audit evidence about the amounts and the corresponding information in the cash surplus. The procedures selected depend on the auditor's judgment. This includes the assessment of the risk of material misstatement of the cash surplus, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Tribunal's preparation of the cash surplus in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion of the effectiveness of the Tribunal's internal control. The audit also includes an evaluation of the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by management, as well as an evaluation of the overall presentation of the cash surplus.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, based on the findings of our audit, the cash surplus of the International Tribunal of the Law of the Sea, Hamburg, Germany, for the biennial financial period 2015–2016, ending on 31 December 2016, and the corresponding information are prepared, in all material respects, in accordance with the Financial Regulations and Rules of the Tribunal.

Basis of accounting and restriction on use

Without modifying our opinion, we draw attention to the Financial Regulations and Rules of the Tribunal, which describe the basis of accounting. The cash surplus

is prepared to comply with the financial regulations referred to above. As a result, the cash surplus may not be suitable for another purpose.

Restriction of distribution and limitation of liability

Our report is intended solely for the Tribunal and the Meeting of States Parties at the United Nations. Our report may not be used for other purposes or distributed to other parties without our prior consent.

We have prepared this report exclusively on the basis of the engagement by the Tribunal. The services we have performed for the Tribunal in this engagement are governed by the BDO AG Wirtschaftsprüfungsgesellschaft Special Terms and Conditions as well as the General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften (German Public Auditors and Public Audit Firms) dated 1 January 2017. In case of contradictory or ambiguous statements of the individual regulations, the following order of priority shall apply: (1) the engagement letter; (2) the Special Terms and Conditions; and (3) the General Engagement Terms.

(*Signed*) Ralf **Wißmann**
German Public Auditor

(*Signed*) Andreas **Prill**
German Public Auditor

Enclosures

Cash surplus for the financial period 2015–2016 of the International Tribunal for the Law of the Sea, as at 31 December 2017

BDO AG Wirtschaftsprüfungsgesellschaft Special Terms and Conditions[1]

General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften (German Public Auditors and Public Audit Firms) dated 1 January 2017[2]

[1] Note by the secretariat of the Meeting of States Parties: not reproduced. A copy of the Special Terms and Conditions (2018 version) is available in English from www.bdo.de/en-gb/insights/publishments/bdo/special-terms-and-conditions-of-bdo-ag-wirtschafts.

[2] Note by the secretariat of the Meeting of States Parties: not reproduced. A copy of the Special Terms and Conditions (2018 version) is available in English from www.bdo.de/en-gb/einblicke/weitere-veroffentlichungen/bdo/general-engagement-terms-of-the-institute-of-certi

Enclosure

International Tribunal for the Law of the Sea: cash surplus for the financial period 2015–2016

Provisional cash surplus as at 31 December 2016

(Euros)

Final excess of income over expenditure 2015–2016	192 840
Cancellation of the 2013–2014 obligations surrendered with 2013–2014 cash surplus	-41 977
Contributions receivable from States parties with respect to 2015–2016	-714 286
Provisional cash surplus 2015–2016	**-563 423**

Cash surplus as at 31 December 2017

(Euros)

Prior periods' contributions received in 2017	352 233
Savings from 2015–2016 obligations	27 514
Cash surplus 2015–2016	**-183 676**

Annex II

Provisional performance report for 2017 as at 31 December

(Euros)

Part Section	Objects of expenditure	2017-2018 approved budget	2017	2017 expenditure (as at 31 December 2017)	2017 unliquidated obligations (as at 31 December 2017)	2017 total expenditure (as at 31 December 2017)	Balance	Total expenditure/ approved budget (percentage)
A	**Recurrent expenditure**							
1	**Judges**	**4 393 000**	**2 254 750**	**2 129 284**	**49**	**2 129 333**	**125 417**	**94.44**
	Annual allowances	3 124 400	1 562 200	1 522 531	0	1 522 531	39 669	97.46
	Special allowances	851 400	425 700	382 183	0	382 183	43 517	89.78
	Travel to sessions	276 700	138 350	121 542	0	121 542	16 808	87.85
	Common costs	140 500	128 500	103 028	49	103 077	25 423	80.22
2	**Judges' pension scheme**	**1 857 300**	**772 800**	**651 586**	**0**	**651 586**	**121 214**	**94.44**
3	**Staff costs**	**7 749 600**	**3 874 800**	**3 709 774**	**12 251**	**3 722 025**	**152 775**	**96.06**
	Established posts	5 088 000	2 544 000	2 489 352	0	2 489 352	54 648	97.85
	Common staff costs	2 249 800	1 124 900	1 080 631	1 545	1 082 176	42 724	96.20
	Overtime	25 000	12 500	11 260	0	11 260	1 240	90.08
	Tempotary assistance for meetings	205 500	102 750	78 724	0	78 724	24 026	76.62
	General temporary assistance	107 900	53 950	21 535	5 810	27 345	26 605	50.69
	Training	73 400	36 700	28 272	4 896	33 168	3 532	90.38
4	**Representation allowance**	**13 600**	**6 800**	**6 766**	**0**	**6 766**	**34**	**99.50**
5	**Official travel**	**181 600**	**90 800**	**87 382**	**0**	**87 382**	**3 418**	**96.24**
6	**Hospitality**	**14 400**	**7 200**	**5 706**	**0**	**5 706**	**1 494**	**79.25**
7	**Operating expenditures**	**3 022 400**	**1 507 650**	**1 309 395**	**112 426**	**1 421 821**	**85 829**	**94.31**
	Maintenance of premises (including security)	2 289 900	1 141 400	998 835	86 784	1 085 619	55 781	95.11
	Rental and maintenance of equipment	358 200	179 100	156 602	18 770	175 372	3 728	97.92
	Communications	190 600	95 300	105 882	4 214	110 096	-14 796	115.53
	Miscellaneous services and charges (including bank charges)	41 300	20 650	14 093	0	14 093	6 557	68.25
	Supplies and materials	123 300	61 650	33 983	2 659	36 642	25 008	59.43
	Special services (external audit)	19 100	9 550	0	0	0	9 550	0.00

Part	Section	Object of expenditure	2017/2018 approved budget	2017	2017 expenditure (as at 31 December 2017)	2017 unliquidated obligations (as at 31 December 2017)	2017 total expenditure (as at 31 December 2017)	Balance	Total expenditure/ approved budget (percentage)
8		**Library and related costs**	**325 600**	**162 800**	**156 988**	**5 743**	**162 731**	**69**	**99.96**
		Library — procurement of books and publications	247 000	123 500	117 747	5 743	123 490	10	99.99
		External printing and binding	78 600	39 300	39 241	0	39 241	59	99.85
B		**Non-recurrent expenditure**							
9		**Furniture and equipment**							
		Purchase of equipment	155 600	77 800	62 900	3 967	66 867	10 933	85.95
C		**Case-related costs**	**3 406 800**	**1 661 400**	**713 055**	**0**	**713 055**	**948 345**	**42.92**
11		**Judges**	**2 221 000**	**973 500**	**280 407**	**0**	**280 407**	**693 093**	**28.80**
		Special allowances	1 666 200	648 900	170 739	0	170 739	478 161	26.31
		Compensation to judges ad hoc	306 100	183 200	92 275	0	92 275	90 925	50.37
		Travel to meetings (including judges ad hoc)	248 700	141 400	17 393	0	17 393	124 007	12.30
12		**Staff costs**	**1 185 800**	**687 900**	**432 648**	**0**	**432 648**	**255 252**	**62.89**
		Temporary assistance for meetings	1 140 800	665 400	428 688	0	428 688	236 712	64.43
		Overtime	5 000	22 500	3 960	0	3 960	18 540	17.60
		Total	**21 119 900**	**10 416 800**	**8 832 836**	**134 436**	**8 967 272**	**1 449 528**	**86.08**